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Leading Questions to Leading Persons

(A Survey)

Dean Fletcher Andrews¹

Dean Stephen R. Curtis²

Dean Charles W. Fornoff³

Dean Ray Forrester⁴

Dean Oscar Hunsicker⁵

Dean William L. Prosser⁶

Dean Stanley Samad⁷

Dean Wilson G. Stapleton⁸

Dean Robert G. Storey⁹

(EDITORS' NOTE: Leading questions on current legal problems of wide general interest and importance were posed by the Editors of this review to nine leading public figures, each a dean of a law school.

These questions were and are frankly difficult and controversial, but their answers are of vital importance to our legal system and to our society. Capsule answers given by these distinguished personages are believed to be interesting and significant.

It is emphasized that only very short answers were requested. Brief answers such as these, of course, are not expected to be, nor do they pretend to be, complete or profound. Their purpose is to indicate succinctly the approach of outstanding American "opinion makers" to difficult socio-legal public problems.)

QUESTION 1. *Would crime be reduced by the imposition of sterner penalties, or would increased severity have little, no, or harmful effects?*

Answers:

Dean Andrews

I think that sterner penalties, strictly enforced, would reduce crime. Many wise people have maintained that basically most people are influenced chiefly by hope of reward or fear of punishment.

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Dean Curtis

It seems unlikely that sterner penalties would, in most instances, be effective. More certainty and uniformity in the application of penalties would accomplish much.

Dean Fornoff

Perhaps more severe in some instances of penalties, such as the traffic area, would help. There are some areas where self-discipline may be encouraged by penalties. In other areas severity is said to be relatively ineffective. I suspect we are working out alternative methods of real promise, and will develop some more.

Dean Forrester

I do not know. Factual research, if not available, should be undertaken to obtain the answer.

Dean Hunsicker

Stern penalties would lead in most instances to harmful effects. To reduce crime requires, among other things, a certainty of punishment that is swift, just and fair.

Dean Prosser

It varies according to offenses, and localities. No generalized answer is possible. In some instances yes, in others no.

Dean Samad

Increased penalties would have little effect in reducing crime.

Dean Stapleton

In almost all instances penalties are adequate. Increased severity would have little effect. What would be effective is the application of penalties already in existence, subject to the unusual situations which require treatment rather than punishment.

Dean Storey

Yes (sterner!)

QUESTION 2. *Should labor unions be required to incorporate, as is required of some types of public-utility organizations, in order to enable governmental authorities to maintain regular supervision of their operations which affect the public?*

Answers:

Dean Andrews

If their operations affect the public, they should be required to incorporate. What is sauce for the goose is sauce for the gander.

Dean Curtis

Yes.

Dean Fornoff

I admit my unreadiness to answer this one. Perhaps this is not the ultimate issue to be answered.

Dean Forrester

Yes—supervision is needed but with care not to substitute political control for present form.

Dean Hunsicker

No! Labor union responsibility can be effected by change in the Taft-Hartley Law.

Dean Prosser

Yes.

Dean Samad

Not necessarily. The government may, of course, supervise unincorporated associations.

Dean Stapleton

Yes, both for the protection of the individual members as well as the public at large.

Dean Storey

Yes.

QUESTION 3. *Should tax-district size be enlarged in order to spread coverage more equitably, so that industrialized areas' property taxes may benefit larger community areas?*

Answers:

Dean Andrews

(Dean Andrews did not answer this question.)

Dean Curtis

Yes, where the size of districts is out of proportion to the concentration of values.

Dean Fornoff

From the point of view of present conditions, the size of many taxing districts is largely accidental or an historical mistake. With the need for more extensive and more costly community efforts, the tax-district needs to correspond to the community limits. With society still changing and no ready definitions of what constitutes a community, we will not have an easy problem. Enlargement seems part of the solution.

Dean Forrester

Yes.

Dean Hunsicker

Yes. Witness Walton Hills, Cuyahoga County—Macedonia-Northfield, Summit County, Ohio. The Ford Plant has the men, the village of Walton Hills gets the tax revenue, and the small villages have the problems of school, police, water, sewer and related problems.

Dean Prosser

Varies according to localities. On the whole, yes.

Dean Samad

Yes. I favor county-wide municipal corporations in areas such as Cleveland, Columbus, Cincinnati, Dayton, etc.

Dean Stapleton

Yes. Except in unusual situations the strictly residential community cannot adequately finance the maintenance of schools and services without an oppressive tax burden. The commercial and industrial areas of a larger tax district would make for a broader tax base on a greater valuation without demanding the school and city services needed in the residential areas.

Dean Storey

Yes.

QUESTION 4. *Should bar associations and/or courts limit the number of lawyers admitted to practice?*

Answers:

Dean Andrews

No. On the other hand, continual improvement should be made in the standards of legal education. If this is properly done, there will be no need for a definite limitation. There are not too many good lawyers, but too many mediocre lawyers.

Dean Curtis

No. Any such arrangement would violate our concept of freedom of action. The law of supply and demand provides adequate control. There is now a shortage of lawyers in many places.

Dean Fornoff

With school placement bureaus reporting shortages of graduates, with more and more competition for good men from other professions and areas, and more and more burdensome requirements for legal education, the question should not be pressing for a good while. A prominent authority estimates the need for a 50% increase in production by 1970. The need may be greater. It has been pointed out that a limitation could be a serious invitation to greater public disfavor, including "socialization."

Dean Forrester

Yes, on basis of quality.

Dean Hunsicker

No. We can arrive at the same result by better means—raise the standards.

Dean Prosser

Not the number, but the quality, which is likely to have the same effect.

Dean Samad

No. The control should be indirect through our selective process of admission and higher academic standards within the schools.

Dean Stapleton

No. The important thing is the training, and the individual who has a legal background can channel himself into other fields if the practice is not available or profitable. Competition in the practice will act as an incentive to all and the basic law of the survival of the fittest will apply.

Dean Storey

No—but higher standards should be required which would limit the number entering.

QUESTION 5. *Is the "City Manager" plan of local government superior to, inferior to, or equal to, the system of elected executives?*

Answers:

Dean Andrews

In general I think it is superior. On the other hand, like everything else, it depends upon the individuals who are running it.

Dean Curtis

The success of government depends much more upon the extent of public interest and participation than upon the form or plan of government.

Dean Fornoff

I had supposed that the chances of good government were better with a manager. Certainly it does not guarantee the best possible results since much will depend upon the political situation surrounding the manager. We seem in some respects to be in a somewhat different political era than formerly, so we may not be battling the same old problems. We are reasonably ignorant of the science of politics.

Dean Forrester

Usually superior.

Dean Hunsicker

Neither better nor worse than the electorate that controls the city.

Dean Prosser

Superior.

Dean Samad

I have no basis for an opinion.

Dean Stapleton

It has its merits and demerits. On the plus side it insures continuing professional management free from the popularity contest at the polls. On the minus side it removes the chief executive one step further away from the will of the people and in effect merges the executive and legislative branches of government into one unit. It has been used successfully to break up corrupt political machines; on the other hand it has been discarded in areas where the city manager hid behind the council and would not be a real administrator. Either system is only as good as the exponent of it.

Dean Storey

Yes.

QUESTION 6. *Should judges in state, federal, and local courts be elected or appointed to office?*

Answers:

Dean Andrews

Yes. The public cannot be expected to know the judicial ability of a lawyer. After all, the people do not elect doctors to the staff of City Hospital. Lawyers are in the same category. Moreover, judges should not be obliged to spend time electioneering.

Dean Curtis

Elected under a plan providing for selection of qualified candidates by members of the bar and an election based upon the records made by judges on the bench.

Dean Fornoff

Appointed, with perhaps almost any system workable. The Missouri Plan worked in a sink-hole of politics. A more old-fashioned system works well still in New Jersey.

Dean Forrester

Appointed.

Dean Hunsicker

This question leaves much to be desired. An appointment to run against a record is better than an elected person running as a political figure. We need in Ohio a complete revamping of our judicial system and a judge, whether of a trial or appellate court, is nevertheless a judge. We need a court of justice with two branches, one for trial, one for review, and a judge may sit in either. Justice is not measured in dollars.

Dean Prosser

Appointed originally, subject to recall by election.

Dean Samad

Appointed on the federal and state level, and elected on the local level.

Dean Stapleton

They should be appointed and should stand for election on their records. The recommendations for appointment should come from those qualified advisors who are in a position to evaluate the qualities of the candidates for office.

Dean Storey

Appointed.

QUESTION 7. *Is there a pressing need for general reapportionment of voting power as between city and farming areas?*

Answers:

Dean Andrews

(Dean Andrews did not answer this question.)

Dean Curtis

I am not sufficiently familiar with Ohio's apportionment problem. There was such a need in Illinois.

Dean Fornoff

Apparently it is still pressing, in spite of some lessening of the apparent conflict of interests between rural and city districts. Perhaps the reasons are to be found in American politics of the realist sort.

Dean Forrester

Yes.

Dean Hunsicker

We need some adjustment between rural and city areas, but not to give control to one or two counties.

Dean Prosser

Varies according to locality. On the whole, yes.

Dean Samad

Yes; in Ohio especially.

Dean Stapleton

Yes. The smaller populations in the farming areas, whose representation is quite often equal to the population in the larger areas because of geographical representation alone, do not have the same problems, do not contribute the same revenue, do not have the same overhead.

Dean Storey

No.

QUESTION 8. *Should the federal government force the issue of integration, or "go slow" and let the states take the lead in reaching solutions of the problem?*

Answers:

Dean Andrews

Because different problems exist in different parts of the country and because American people do not like to be forced, I think the States should work out their own problems, with the proviso that they must not procrastinate too long.

Dean Curtis

Only Solomon can answer this. If the federal government does not apply pressure,

some states will not integrate. If pressure is applied with too much impatience, resistance becomes violent.

Dean Fornoff

There seems to be plenty to do for everyone to have a share, and apparently some federal action is necessary in a great many situations. With politics in some of the states reduced to a low level of personalities, the good-will of many sections of the population can be pretty thoroughly frustrated by politicians seeking to play up to strong prejudices. Since a new pattern must be established, "forcing" it cannot be done in one fell blow, and much construction must be done by those who are to live the new pattern. It is and must be a complex process.

Dean Forrester

Go slow.

Dean Hunsicker

It must ultimately be solved on the local level by men of good will. No other method will solve this problem.

Dean Prosser

Go slow for the present, but force the issue after an interval.

Dean Samad

I fear the "go slow" and let the state take the lead won't work. The federal government should assume leadership.

Dean Stapleton

The federal government should, through the Supreme Court, determine the basic law. The State should implement the law. The process is educational and can best be carried on at the State and local levels. Individual behavior cannot be legislated.

Dean Storey

Go slow.

QUESTION 9. *Should state and local assistance be made available to parochial schools, liberally, cautiously, or not at all?*

Answers:

Dean Andrews

(Dean Andrews did not answer this question.)

Dean Curtis

Not at all.

Dean Fornoff

I shall have to plead "unprepared."

Dean Forrester

Cautiously.

Dean Hunsicker

Not unless we change our constitution.

Dean Prosser

Cautiously.

Dean Samad

Such assistance should be made liberally.

Dean Stapleton

No. If the parochial school of whatever denomination elects to split from the general school system it should be treated as any tuition school.

Dean Storey

Not at all.

QUESTION 10. *Should governmental regulation of industrial problems such as air and water pollution be a matter primarily for state or primarily for local legislation and control?*

Answers:

Dean Andrews

(Dean Andrews did not answer this question.)

Dean Curtis

Except in large municipalities these problems involve areas too large for local control.

Dean Fornoff

I suppose we can retreat to an established technique by answering that such matters as can and will be taken care of locally, should be left to the local government, and

that others, particularly where the effects of the industrial conduct are of more than local scope, ought to be dealt with by state action. There is no point to having a bigger mess in Columbus than is essential, but Columbus ought to recognize and protect interests that are important to a considerable region or the whole state.

Dean Forrester

State.

Dean Hunsicker

This requires a cooperative effort with the state leading the way, much as our roads and bridges are built.

Dean Prosser

Varies according to locality. On the whole, local.

Dean Samad

State rather than local. In the area of atomic energy reactors, the controlling unit should be the federal government.

Dean Stapleton

Local control within the State legislative enactment.

Dean Storey

State.

QUESTION 11. *Should parents be punished for misdeeds of juvenile delinquents?*

Answers:

Dean Andrews

No. In too many instances the child commits misdeeds despite his parents. There are other ways of punishing parents where they are actually responsible.

Dean Curtis

If judiciously controlled, this may be effective. It is being experimented with in a few places.

Dean Fornoff

We often feel like it, until we are the parents and then we feel helpless. One might rephrase the question to a form with

a more obvious sound: should parents be punished for their own delinquencies? I am far from sure how punishment can start the ball rolling on constructing a decent and useful citizen out of the youth that is having trouble getting started. There has been a failure of some part of the educational process, parental or school, or both. And we need to operate inside the head of the youth. Will the goaded parent have the skill to do it?

Dean Forrester

No.

Dean Hunsicker

No, but some measure of legal responsibility in tort should be imposed on a neglectful parent.

Dean Prosser

Not punished, but limited liability in tort.

Dean Samad

Only if the parent has been at fault—vs. “absolute” liability in this area.

Dean Stapleton

No. If the juvenile delinquents are properly punished the parents will come in line.

Dean Storey

Yes—the type of penalty should be carefully considered.

QUESTION 12. *Should recruiting of executives for governmental commissions and boards draw personnel primarily from among business leaders or primarily from professional and scholarly leaders?*

Answers:

Dean Andrews

I do not like your classification. Why put professional and scholarly leaders in the same bracket? I think the recruiting should be mainly from business and professional leaders, with a smattering of scholarly leaders who have the ability to look at things from a practical standpoint. Some do and some do not.

Dean Curtis

Most such agencies require experience that is possessed only by men in business. Agencies whose work requires lawyers or scientists or educators should of course be manned by such persons.

Dean Fornoff

Good men for public offices come from many directions, and no one group can claim an automatic preference to the vacancies. Lawyers frequently have minds and personalities adaptable to many types of jobs and extremely useful in all of them. Some changes in pre-legal and legal education could make more lawyers useful in public office—changes to add to their powers to investigate thoroughly, to suspend judgment pending that process, to seek the long-range answers and the answers that recognize as many social values as are involved. When the degree is conferred, the candidates are admitted to a learned profession. In that sense, the more learning the better to point out the man we want. But lawyers must remember that one way or another a lot of other people are learned too.

Dean Forrester

Evenly.

Dean Hunsicker

From both: neither group has a monopoly on ability.

Dean Prosser

Business.

Dean Samad

I have no opinion on this.

Dean Stapleton

Personnel for these boards can well be divided among the various leaders, so that the practical man can benefit from scholarly advice and vice versa.

Dean Storey

Professional and scholarly leaders.

QUESTION 13. *Should a compensation-insurance type of handling of personal injury claims replace the present system of court handling of such damage claims?*

Answers:

Dean Andrews

(Dean Andrews did not answer this question.)

Dean Curtis

It is worth trying.

Dean Fornoff

Better courts and lawyers (meaning better than those of the past) are a serious possibility. We see and hear enough of the possibilities within our own profession today to know that the administration of this type of justice can be considerably improved.

Dean Forrester

Yes.

Dean Hunsicker

No.

Dean Prosser

Yes, eventually. We are not yet ready for it.

Dean Samad

No. But the present system of court administration should be improved to permit speedier trial of such cases, that is, reduce the backlog of cases.

Dean Stapleton

This would depend in large measure on who was controlling the bureau handling the compensation. Such a project is possible only if approached impartially. Such a system could work, and if working could cut down delay and costs, and assure to the injured a fair return without delay.

Dean Storey

No.